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IN THE HIGH COURT OF JUDICATURE AT Chennai

DATE : 05.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

S.A.Nos.55 & 56 of 1997
and
C.M.P.No.767 of 1997

G.Padhmanabhan .. Appellant(plaintiff and Cross objection)

vs.

1.Rama Venkatachalam
2.Ramesh @ Elanchezhian
3.V.S.Ramachandran
4.Jayalakshmi .. Respondents(Defendants)

Prayer: These second appeals have been preferred against the Judgment dated 21.12.1995, and made in Cross Appeal in A.S.No.185/1995 and A.S.No.185/1995 respectively passed by the II Additional City Civil Judge, Chennai, reversing the decree and judgment in O.S.No.607/1994 dated 20.04.1995 on the file of the II Assistant City Civil Judge, Chennai.

For Appellant : Mr.B.K.Srinivasan (in both SAs)

For Respondent s : Mr.C.T.Mohan for R1 to R3 (in both SAs)
Mr.D.Krishnan for R4

JUDGMENT

The S.A.No.55/1997 has been preferred against the decree and judgment in the cross appeal in A.S.No.185/95 on the file of the II Additional Judge, City Civil Court, Chennai. S.A.No.56/1997 has been preferred against the decree and judgment in A.S.No. 185/95 on the file of the II Additional Judge, City Civil Court, Chennai. The plaintiff, who has succeeded in the suit but lost the same before the first appellate Court, is the appellant in S.A.No.56/1997. The cross-objector viz. the appellant in S.A.No.56/1997, is the appellant in S.A.No.55/1997.

2. The short facts in the plaint relevant for the purpose of deciding this these appeals sans irrelevant particulars are as follows:-

The fourth defendant is the wife of the plaintiff. Third defendant is the father-in-law of the plaintiff. The first defendant and third defendant have married the sisters of the plaintiff viz.

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Smt.Bhagyalakshmi and Smt.Rajeswari. The second defendant is the son of the first defendant. The fourth defendant is the daughter of the third defendant. Due to the difference of opinion the plaintiff and D4 are living separately. The 1st and 3rd defendants are giving evil advice to the 4th defendant. Due to their evil advice the D4 began to behave rudely and high-handedly against the plaintiff. At one stage D4 had gone to the level of throwing acid on the plaintiff. The plaintiff narrowly escaped from that attempt with minor injuries. The fourth defendant preferred a false complaint against the plaintiff in All Women Police Station, Thousand lights, Chennai. The plaintiff was released by the orders of the High Court, Chennai. The fourth defendant executed a registered deed of settlement dated 11.03.1985 transferring all her right, title and interest in the property bearing Door No.16, Jayalkshmi Puram III Street, Nungambakkam, Chennai-34, infavour of the plaintiff absolutely. The fourth defendant got the property through the Will executed by the father of the plaintiff, since he is related to D4 as a grand-father. Even at that time, it was understood, that the property shall vest with the plaintiff alone. The settlement deed is irrevocable and the plaintiff took possession of the property, made considerable improvements. The plaintiff is in possession and enjoyment of the property. The plaintiff is inducting tenants, collecting rents and carrying out repairs and paying taxes. The plaintiff is also in possession of a portion of the property. Only with a view to cause wrongful loss to the plaintiff and annoy the plaintiff, the defendants are instigating the 4th defendant to interfere with the plaintiff's possession and enjoyment of his property. The defendants are colluding and threatening to use force against the tenants of the plaintiff in respect of the suit property. The 4th defendant has fallen a prey to the evil designs of the other defendants and during the absence of the plaintiff, she is scaring the plaintiff's tenants, threatening to cause bodily injury. The defendants have no manner of right over the suit property. The defendants are also intimidating the plaintiff. Hence the suit for perpetual injunction in respect of the suit property.

3.The fourth defendant alone has filed a written statement with the following averments:-

3(a) The fourth defendant is the wife of the plaintiff and their marriage was solemnized on 01.05.1997. The plaintiff is the younger brother of the mother of this defendant. After the marriage she was living with the plaintiff at No.24, Appu Naicken Street, Nungambakkam, Chennai-34. The plaintiff somehow did not like this defendant and used to abuse and beat her often. His father used to advise him not to be rude with this defendant. The plaintiff was then employed as Road Inspector in the department of PWD at Chennai. Soon after the marriage he got a transfer to Kallakurichi and refused to take this defendant along with him. Even when he visited Chennai, he would stay at Anna Nagar, in his elder brother's house and would not meet the 4th defendant or his parents.

3(b) Fourth defendant's grand father executed a Will in June 1979 giving life interest to this defendant to the suit property. The

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grandfather, Gopalsamy Pillai who is also father of the plaintiff had mentioned in the Will about the indifferent attitude of the plaintiff in his family life. This 4th defendant was a dutiful wife had extended all her love and affection but the plaintiff never changed his attitude and he continued to abuse and beat this defendant.

3(c) In the year 1980 she became pregnant and the plaintiff did not want the child. He took her to a clinic at Perambur Paper Mills Road and caused forceful abortion on this defendant. He threatened that she should not say either to her parents or to grand parents about the abortion. This defendant was leading this sort of miserable life with the plaintiff. Meanwhile her grandfather expired on 26.10.1982 and her grandmother on 01.05.1984. The plaintiff shifted his family to his elder brother's house at Kumarappan Street, Nungambakkam, Chennai-34. After the death of her grandparents this defendant was subjected to more miseries. She was not permitted to use either T.V. or Radio. Even the phone the plaintiff used to keep under lock. He would not come for many days to the house. He used to abuse his father for writing the Will by giving life interest of the suit property to this defendant. He used to collect rent from the suit property and this 4th defendant used to sign the rental receipts as she is the life interest holder. Then the plaintiff insisted that she should execute a power of attorney in his favour so that he could collect the rents from the tenants and give receipts. This defendant has signed in the settlement thinking that it was only a power of attorney deed.

3(d) After signing the document the plaintiff was cordial with this defendant for some time. Within six months he had changed and started ill-treating this defendant. He used to beat her always on her head. Years ago he caused a bleeding lacerated injury on her head by beating her with a wooden stick.

3(e) The plaintiff from 1988 started giving trouble to the fourth defendant by compelling to give consent for the second marriage. The 4th defendant refused to give consent which resulted in further assault of D4 by the plaintiff. The plaintiff refused to provide money to run the family and only this defendant's father, the 3rd defendant, was helping her. Then, the 4th defendant approached the tenants in the suit property and asked them not to give rent to the plaintiff and pay to her directly. On their refusal to pay rent to the plaintiff, he issued them notice claiming ownership over the suit property on the basis that this defendant had executed a settlement in his favour. Then only this defendant in the year 1991 came to know that by fraud and misrepresentation the plaintiff obtained a settlement deed from this defendant, instead of Power of Attorney Deed. She contacted her father and told him as how she was cheated by the plaintiff. Then she cancelled the settlement deed by another registered document dated 29.08.1991 and informed him that he should not collect the rent from the tenants on the strength of the so called settlement deed and the defendant submits that she was given only a life interest and hence she cannot transfer absolute right to the plaintiff under the settlement deed. It is a false document obtained by

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the plaintiff by fraud and misrepresentation. He does not get any right in the suit property on the basis of the settlement deed. It was never acted upon. The house tax and electricity bills are all assessed only in the name of the 4th defendant and only she was paying the taxes. The plaintiff was not given possession of the suit property and he was at no point of time took possession of the suit property. He used to collect rents only on behalf of this defendant as her agent. Further this 4th defendant had validly cancelled the settlement on 29.08.1991. Hence the plaintiff has no right whatsoever in the property. This defendant with the help of the funds given by her father put up additional, construction on the suit property.

3(f) In view of the cancellation of the settlement deed dated 29.08.1991 also the plaintiff has no right in the suit property. Further as per the Will dated 06.06.1979 executed by the grandfather of this defendant she was given only life interest in the suit property. But the plaintiff had got the settlement as if this defendant was the absolute owner of the suit property and he conveyed the absolute title to the plaintiff. This fact itself would show that the settlement deed is a fraudulent document and it was obtained by the plaintiff by fraud and deception.

3(g) The 4th defendant studied upto 9th standard and she is a simple house wife. It is false to allege that she was ill-advised by the defendant 1 to 3 to behave rudely and high handedly. The allegation that she had thrown acid on the plaintiff is also false. She never raised even her little finger against the plaintiff. The other allegations that she attempted to dispossess his belongings is also false. On 11.02.1994, the plaintiff came to the house and removed all the belongings in the house including her jewels and sarees and cooking utensils. She gave a report to the police but he used his influence and they directed this defendant that it was a family dispute and would not take any action. On 15.12.1993 the plaintiff had beaten her and caused bleeding injury on her face. She could not bear the ill-treatment and so she gave a report to the Women's Cell. It is not a false report. He was sent for by the police and he had given a written apology, to the police that he will not beat his wife. The plaintiff was never in possession of the suit property. 4th defendant is in possession of the property by paying house tax and other revenues. Hence the suit is liable to be dismissed with costs.

4. On the above pleadings the learned trial judge has framed four issues for trial. The plaintiff has examined himself as P.W.1. Ex.A.1 to A.14 were marked on the side of the plaintiff. On the side of the defendant, 4th defendant has examined herself as D.W.1 and Ex.B.1 to B.6 were marked.

5. The substantial questions of law involved in this second appeal are as follows:-

i) Whether the title to the suit property of the necessity of probate can be gone into a suit for bare injunction

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filed by the plaintiff when possession alone in such a suit is a relevant consideration?

ii) Whether the 4th respondent having conveyed her right, title and interest in the suit property to the plaintiff as per Exhibit A-13 is entitled to revoke the settlement deed as per Exhibit B-3 especially when there was no reservation of revocation made in the settlement deed viz., Ex.A.13?

6.The Point:-

6(a) It is an unfortunate fight between the husband, who is the plaintiff, and the wife, 4th defendant. The suit is for mere injunction in respect of the plaint schedule property which is at D.No.16, Jayalakshmi Puram, III Street, Nungambakkam, Madras-600 034, R.S.No.476/35, Block No.18, Nungambakkam, Madras, measuring 2200 sq. feet. The parties to the suit are very close relations. The 3rd defendant is the father-in-law of the plaintiff, who is the father of the 4th defendant, and apart from that 3rd defendant is the brother of the mother of the plaintiff. The 1st and 2nd defendants are the husbands of the sisters of the plaintiff. The plaintiff claims title in respect of the suit property by settlement deed executed by the 4th defendant dated 11.03.1985 under Ex.A.1. The plaintiff's father viz. Gopalsamy Pillai has executed a Will dated 06.06.1979 infavour of D4 who is related in two ways ie., his daughter-in-law and also his grand daughter(daughter's daughter - plaintiff's sister's daughter). Under Ex.B.1, the testator has executed the said Will infavour of D4 in respect of the suit property giving only life interest to her and after her death the progeny of his sons should get the suit property. Admittedly the said Will was executed at Chennai. So necessarily it is to be probated under Section 217 of the Indian Succession Act. So pending probate proceedings D4 cannot claim any right in respect of the suit property as correctly held by the court's below.

6(b) Ex.A.13 is the settlement deed under which the plaintiff claim right in respect of the suit property. A reading of Ex.A.13 will go to show that the 4th defendant had executed a settlement deed infavour of the plaintiff only on the basis of the Will-Ex.B.1 said to have been executed in her favour by the plaintiff's father which is pending probate. Unless Ex.A.1 is probated the plaintiff cannot claim any right in respect of the suit property under Ex.A.13-Settlement. Since there is no revocation clause incorporated under Ex.A.13-settlement deed by D4, Ex.B.3 executed by her to revoke the settlement is also not valid.

6(c) As per Section 126 of the Transfer of Property Act a gift may the suspended or revoked only under the following circumstances:-

> "The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

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"A gift may also be revoked in any of the cases (save want or failure of consideration) in which, it if were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice."

So it is clear from the provision of law under section 126 of the Transfer of Property Act, the settlement under Ex.A.13 cannot be said to be revoked under Ex.B.3 since there is no reservation made by the settlor (D4) in Ex.A.13-settlement deed for future revocation.

6(d) The learned counsel for the appellant would contend that the 4th defendant has approached his tenant and requested them not to pay rent to the plaintiff, which circumstance necessitated the plaintiff to get an order of injunction. But this contention of the learned counsel for the appellant cannot be upheld because there is absolutely no complaint made by any of the tenants of the plaintiff to the effect that they have been prevented from paying the rent to the plaintiff. Since the plaintiff has failed to maintain his wife, D4 herein, which necessitated D4 to approach the tenants asking them to pay the rent to her. The trial Judge taking into consideration the plight of D4, has ordered Rs.1,500/- per month to be paid by the plaintiff to the 4th defendant. But the said order was challenged by way of cross appeal by the plaintiff in A.S.No.185/1995 and the first appellant has rightly dismissed both the appeal as well as the cross appeal. I do not find any reason to interfere with the well considered order of the first appellate Court in A.S.no.185/1995 and also in the cross appeal in A.S.No.185/1995 on the file of the II Additional City Civil Judge, Chennai.

6(e) The learned counsel appearing for the appellant relying on AIR 1982 BOMBAY 79 (Ratiram Pundlik Khedkar Vs. Pundlik Arjun Khedkar), contended that if a person is said to be in possession of a property then his possession is to be protected by way of an order of injunction. The exact observation in the above said dictum runs as follows:-

"Now, in the first place, I find that an application for temporary injunction in a suit for perpetual injunction proceeds on an assumption that the plaintiff on the date of the suit and on the date of making of such an application is in actual possession of the property and that his peaceful possession is being threatened. If the plaintiff is not in possession then the suit for perpetual injunction simpliciter in fact would be untenable and if in such a situation if he applies for temporary injunction (not being in possession) and if the Courts were to grant such a relief, there is every possibility that such an order obtained by an ingenious and crafty plaintiff on suppression of true facts is likely to be used not as a shield to preserve and protect his possession, but verily as

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> warrant of possession against which the Courts issuing an order of injunction must guard themselves."

The above dictum will not be applicable to the present facts of the case because in the case on hand the plaintiff claims title under a settlement deed said to have been executed by his wife-D4. D4 inturn said to have got title in respect of the suit property by way of a Will-Ex.B.1. Admittedly Ex.B.1-Will has not yet been probated as per Section 217 of the Indian Succession Act. Under such circumstance, the plaintiff's title itself is in jeopardy and hence an order of injunction cannot be granted in his favour.

6(f) The learned counsel for the appellant relied on AIR 1999 SC 1666 (Prataprai N.Kothari Vs. John Braganza), and contended that even when considering the title of the plaintiff on the basis of his long possession an order of permanent injunction can be granted. The exact observation of the Honourable Apex Court in the above said case is as follows:-

> "We have already extracted the summary of conclusions arrived at by the learned single Judge of the High Court. That shows that his conclusions were vitiated by his view that the appellant had title and possession followed titled. It is quite obvious that the learned single Judge had not taken note of the principle of possessory title or the principle of law that a person who has been in long continuous possession can protect the same by seeking an injunction against any person in the world other than the true owner. It is also well settled that even the owner of the property can get back his possession only by resorting to due process of law."

In the cause of action column the plaintiff has averred in the plaint that on 20.01.1994 the defendant made an attempt to interfere with the possession of the plaintiff. To substantiate this contention the learned counsel for the appellant would rely on the recitals in the written statement and submit to the effect that the 4th defendant had approached the tenants and requested not to pay the rent to the plaintiff. To substantiate this contention, no tenant has made any complaint either to the plaintiff or to the police to the effect that D4 is disturbing his possession in the property. In para 6 of the written statement, D4 has stated that in the year 1988 the plaintiff threatened her to give consent for his second marriage and also refused to provide money, which made her to approach the tenants in the suit property and ask them not to give the rent to the plaintiff and pay to her directly. It had happened in the year 1988, whereas in the plaint at para 9 the plaintiff has stated that on 20.01.1994 his possession was interfered with. Under such circumstances, I find no reason to interfere with the well considered order of the first appellate Court in A.S.No.185/1995 and cross appeal in A.S.No.185/1995 on the file of the II Additional City Civil Judge, Chennai. Points are answered accordingly.

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7. In fine, S.A.Nos.55 & 56 of 1997 are dismissed confirming the Judgment in A.S.No.185/1995 and cross appeal, on the file of the II Additional City Civil Judge, Chennai. Considering the close relationship of the parties, there is no order as to costs. Connected CMP.No.767/1997 is also dismissed.

ssv

Sd/-
Asst.Registrar

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Sub Asst.Registrar

To,
1. The II Additional City Civil Judge, Madras.

2. The II Assistant City Civil Judge, Madras.

3. The Section Officer, V.R.Section, High Court,
Madras.

+1 cc to M/s.B.Kaalathinathan, Advocate Sr.No.7029.

+1 cc to M/s.C.T.Mohan, Advocate Sr.No.6657.

+1 cc to M/s.B.Kaalathinathan, Advocate Sr.No.7028.

+1 cc to M/s.C.T.Mohan, Sr.No.6656.

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